

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 82252.1, 8552.3, 8553, of the Fish and Game Code and to implement, interpret or make specific sections 8552.1, 8552.3 and 8552.7, of said Code, proposes to amend Section 163.1, Title 14, California Code of Regulations, relating to Herring Permit Transfers.

Informative Digest/Policy Statement Overview

Under existing law (Fish and Game Code Section 8550), Pacific herring may be taken for commercial purposes only under the authority of a permit, and herring permits are transferable under the provision of Fish and Game Code Sections 8552.2 and 8552.6. Fish and Game Code Section 8552.7 currently sets the fee to transfer a herring permit at \$5,000, but existing law (Fish and Game Code Section 8552.1) authorizes the Fish and Game Commission (Commission) to adjust the herring permit transfer fee to a level that will not discourage the transfer of permits or limit entry into the fishery, and that will ensure sufficient funds to cover reasonable Department of Fish and Game (Department) costs associated with management of the fishery.

Existing law (Fish and Game Code Section 8552.3) provides the Commission with the authority to adopt regulations to facilitate transfer of herring permits including regulations that would allow an individual to own a permit for each of the three gill net platoons (also called fishing groups and designated DH, Odd, and Even) in San Francisco Bay; eliminate the point system for qualifying for a herring permit; and allow a herring permit to be transferred from a parent to child or between spouses, when those individuals are otherwise qualified to participate in the fishery.

Existing law (Fish and Game Code Section 8552.2) limits permit transfers to individuals with at least 20 herring fishery points (also known as experience points) unless the permit is transferred to partner in a partnership established under the provision of Fish and Game Code Section 8552.6. Permits held in partnership may be transferred to one of the partners if that partner has at least 10 experience points and the partnership has existed for at least three consecutive years. Fish and Game Code Section 8552.8 establishes the basis for earning experience points in the roe herring fishery.

The proposed regulations would lower the herring permit transfer fee from \$5,000 to \$1,000. The proposed regulations to facilitate transfers are based on recommendations received from a group of Director's Herring Advisory Committee members and on a proposal received by the Commission at their August 18-19 by a herring permittee. Those regulations would: authorize permit holders in San Francisco Bay to hold permits in more than one platoon; eliminate the point system and establish new eligibility criteria for permit transfer; specify the documents needed to demonstrate eligibility; eliminate the requirements that a permit holder mail a notice of intention to transfer to everyone on the Department's list of individuals with experience points (commonly called the 20-point list). The proposed regulations would also specify the requirement for requesting a permit transfer, specify that an application must be for each permit each season, and provide a process to appeal a Department denial of a transfer.

The following is a summary of the proposed eligibility criteria:

The proposed regulations would limit transfers to individuals who meet at least one of the following criteria:

a) have fished in the herring roe fishery in California for at least one season and have held a California commercial fishing license for at least three years and provides documentation; b) is a spouse or child of the current permit holder who is otherwise qualified; or c) is a current San Francisco Bay permit holder who is purchasing another San Francisco Bay permit.

The proposed regulations would authorize permit holders in San Francisco Bay to own permits in more than one platoon (odd-numbered permits, even-numbered permits, and December herring ("DH") permits), but would prohibit anyone from holding more than one permit per platoon. Individuals holding converted round haul ("CH") permits that are authorized to fish in two platoons would be allowed to own a permit for the platoon that is not authorized under his or her CH permit.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Museum of Natural History, Farrand Hall, 2559 Puesta del Sold Road, Santa Barbara, on Friday, November 4, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 4, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than November 4, 2005, at the hearing in Santa Barbara, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon Fischer or Jon Snellstrom at the preceding address or phone number. **Becky Ota, Department of Fish and Game, phone (650) 631-6789, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

None. No adverse economic impacts are anticipated from the proposed regulations. The proposed regulation, at most, would facilitate the sale and transfer of herring permits by fishermen desiring to leave the fishery through reduced transactions costs. There are currently 417 herring permit holders. Anecdotal information from the fishermen, and some statistical corroboration at the Department of Fish and Game, indicate that the current transfer fee of \$5,000 may present a barrier to the sale and transfer of herring permits.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None. Lowering the transfer fee cost would reduce transactions costs and likely enable some fishermen to retire while capturing a larger portion of the current value of their permit. This would facilitate the perpetual use of permits for ongoing business activities and opportunities, thus preserving or perhaps increasing the number of jobs in the State. This would be in contrast to a permit holder retiring or dying and letting the permit lapse due to a relatively high permit transfer fee of \$5,000.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Since April 1, 1997 when the transfer fee rose to \$5,000, there have been an average of four permit transfers per year; generating about \$20,000 (four x \$5,000) in transfer fees to the Department. Industry representatives have stated that more fishermen would retire and sell their permits, if transfer fees were lower. Department records on herring permit transfers over the last 17 years appear to confirm that a \$5,000 transfer fee is a barrier to fishermen selling and transferring their permits. The average age of resident herring fishermen rose from 50 years of age in 1996, to 58 years of age in 2004. This suggests that fishermen are keeping their permits longer, and are disinclined to sell them. Based on advertisements in recent commercial fishing trade journals, the current price for a San Francisco Bay herring permit is less than \$10,000. Thus, a \$5,000 transfer fee is at least 50 percent of the revenues generated from sale of a permit at current market prices. This likely deters older fishermen from retiring and selling their herring permits. The average age of herring permit holders at death or retirement was 73.5 years of age from 1996 through 2004. The age composition of herring permit holders in 2004 is as follows: 0.9 percent are age 18-30, 8.0 percent are age 30-40, 22.2 percent are age 40-50, 40.1 percent are age 50-60, 16.5 percent are age 60-70, 8.5 percent are age 70-80, and 3.8 percent are age 80 or older. Based on this current age composition of the 417 herring fishermen, there are 22 individuals at or above the threshold age (that is, average age at death or retirement) of 73.5 years. The Department anticipates that these 22 permit holders are likely to transfer their permits soon after implementation of a transfer fee reduction. Thus, in the first couple years of a new \$1,000 transfer fee, there may be 10 to 15 transfers a year, representing \$10,000 to \$15,000 in Department revenues in each year. Thereafter, the Department expects the annual number of transfers to average about 2.2 over the next five years, and about 2.8 over the next 10 years, based on the 2004 age structure of the herring permit holders and assuming a retirement threshold age of 73.5 years. However, permit sale and transfer activity is dependent on, among other things, the availability of qualified and willing buyers.

Compared to historical permit transfers, which average four transfers per year, under the reduced transfer fee the Department would likely lose revenues of up to -\$9,000 per year in the first couple of years. This revenue loss would occur even with anticipated increases in the number of transfers to about 11 in year one and year two of the proposed regulations. If the number of transfers thereafter average 2.8 a year, annual losses in transfer revenues would be approximately -\$17,200 for the Department. This assumes that all other factors potentially affecting permit transfer activity stay the same (e.g., ex-vessel value of the product, Japanese economy, foreign exchange rates, out-of-state competition, and existing inventories). Japan imports nearly all of the herring roe from fisheries in California. Current indications are that the Japanese economy is not likely to rebound dramatically in the next few years.

(e) Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: September 6, 2005

Robert R. Treanor
Executive Director